IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE SIDE JURISDICTION

CRIMINAL APPLICATION NO. 3415 OF 2005

Mrs.Asha Vinod Gupta
and Anr. ...Applicants

Vs.

The State of Maharashtra & Ors...Respondents

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Mr.A.M.Saraogi for Applicants
Mr.S.S.Tatkare A.P.P. for State

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**CORAM : SMT.V.K.TAHILRAMANI,J.**
**DATE OF RESERVING ORDER : JUNE 10,2005**
**DATE OF PRONOUCING ORDER : JUNE 21,2005**

**P.C.:**

1. Heard the learned advocate for the applicants and learned A.P.P. for the State.

2. The applicants are seeking quashing of process issued under Section 138 of Negotiable Instruments Act, in C.C.No. 3788/SS/2005 by Metropolitan Magistrate, 23rd Court at Esplanade Mumbai.

3. Mainly two contentions have been raised by the learned advocate for the applicants i.e. there is

nothing in the complaint to show that the applicants were incharge or were responsible to the Company for the conduct of its business at the relevant time. In the case of **K.P.G.Nair V. Jindal Menthol India Ltd. (2001) SCC 218,** the Supreme Court has observed that the words of Section 141(1) of the said Act, need not be incorporated in a complaint as magic words, substance of the allegations read as a whole should answer and fulfil the requirements of the ingredients of the said provision. On reading the complaint as a whole in the present case, it is clear that according to the complainant, the applicant was in charge of and was responsible to the company for the conduct of its business.

4. Thereafter, it was contended that the case of the complainant that the applicants were directors of the company at the relevant time, is false and reliance has been placed on Form No.32 at Annexure-C to the application to show that the applicants were not directors of the said company at the relevant time. In the case of **Raj Lakshmi Mills V.Shakti Bhakoo reported in (2002) 8 SCC 236,** the High Court had quashed the proceedings on

the assumption that "X" was not in charge of or responsible for the conduct of business of the firm. The Supreme Court has observed - "We are of the opinion that at the stage of summoning when evidence was yet to be led by the parties, the High Court could not on an assumption of facts come to a finding of fact that the accused was not responsible for the conduct of the business. On this ground alone, these appeals are allowed and the impugned decision of the High Court is set aside".

. Moreover, in the case of State of **M.P. Vs. Awadh Kishore Gupta & Ors. reported in (2004) 1 SCC 691,** the Supreme Court has observed that in the matters under Section 482 Cr.P.C., annexures to the petition under Section 482 cannot be termed as evidence without being tested and proved and hence, these annexures should not be acted upon by the High Court. So also, in the case of **Chand Dhawan V. Jawaharlal and Ors. reported in (1992) 3 SCC 317**, it has been held by the Supreme Court that the Court should not act on the annexures to the petition under Section 482 of Cr.P.C. where the documents are not admitted or accepted by the

complainant. In view of the observations of the Supreme Court in the various decisions cited above, I am of the opinion that no reliance can be placed on the documents annexed at this stage. In this view of the matter, I find no merit in the application and the application is rejected.

[ SMT.V.K.TAHILRAMANI,J.]